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No. 00-1225

In the Supreme Court of the United States

JOHN A. HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a judgment for federal income taxes is subject to a state statute of limitations.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 11-14) is unpublished, but the decision is noted at 224 F.3d 766 (Table). The opinion of the district court (Pet. App. 17-18) is unofficially reported at 99-2 U.S. Tax Cas. (CCH) ¶ 50,821. The opinion of the bankruptcy court (Pet. App. 20-24) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 27, 2000. The petition for rehearing was denied on August 25, 2000. The petition for a writ of certiorari was filed on November 22, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner was arrested, convicted and incarcerated in 1978 for drug trafficking. When he failed to file a federal income tax return for 1978, the Internal Revenue Service prepared a substitute return for him for that year as authorized by Section 6020 of the Internal Revenue Code, 26 U.S.C. 6020. Pet. App. 21.

The United States thereafter brought suit to obtain a judgment for the resulting tax assessment of approximately four million dollars. On April 30, 1985, a default judgment was entered in that suit by the United States District Court for the Southern District of Florida. On December 7, 1992, a certified copy of the judgment was recorded in Nueces County, Texas. Pet. App. 21-22.

2. In 1994, petitioner filed a petition for relief under Chapter 7 of the Bankruptcy Code in the bankruptcy court for the Southern District of Texas. In the petition, petitioner listed his 1978 income tax liability as an outstanding debt. Pet. App. 22. Petitioner commenced an adversary proceeding in that case, however, to obtain a declaration that his 1978 federal tax liability was uncollectible. He contended that the statute of limitations on collection of federal taxes in 26 U.S.C. 6502(a) incorporates applicable state statutes of limitations and that, under the applicable Florida statutes, the debt for his 1978 federal taxes could no longer be collected.

The bankruptcy court granted summary judgment to the United States. The court held that 26 U.S.C. 6502(a) incorporates federal, rather than state, statutes of limitations and that, under the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. 3001 et seq., the statute of limitations on collection of the judgment

for federal taxes does not expire for 20 years after the judgment was entered. Pet. App. 22-23.

3. The district court affirmed. Pet. App. 17-18. The court noted that "[i]t is well established that state statutes of limitations do not run against the United States." *Id.* at 17. The court noted that the controlling federal statute specifies that, if a timely court proceeding for collection of a federal tax is commenced, the period for collection is extended "until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable." 26 U.S.C. 6502(a). The court stated that the fact that this statute contemplates that judgments may, at some point, become unenforceable "is not a clear statement of Congressional intent to make judgments in favor of the United States subject to state-imposed limits on enforceability." Pet. App. 18. The court concluded that the judgment was not subject to the state statute of limitations and was instead enforceable under the federal statute of limitations contained in the FDCPA. *Ibid.*

4. The court of appeals affirmed. Pet. App. 11-14. The court agreed with the lower courts that 26 U.S.C. 6502(a) does not waive the immunity of the United States from state statutes of limitations, for that statute provides no "clear statement" of intent to make judgments in favor of the United States subject to state limitations on enforcement. Pet. App. 13.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted.

1. a. This Court has long concluded that "the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless congress has clearly manifested its intention that they should be so bound." *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U.S. 120, 125 (1886). In *United States* v. *Summerlin*, 310 U.S. 414 (1940), the Court thus noted that "[i]t is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights." *Id.* at 416 (citations omitted). Accordingly, "[w]hen the United States becomes entitled to a claim, acting in its governmental capacity, and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement." *Id.* at 417. The Court has broadly stated that the rule described in *Summerlin* applies whenever "the right at issue was obtained by the Government through, or created by, a federal statute" and "the Government was proceeding in its sovereign capacity." *United States* v. *California*, 507 U.S. 746, 757 (1993).

In *United States* v. *Overman*, 424 F.2d 1142 (1970), the Ninth Circuit held that a judgment for a federal tax liability is not subject to limitations and is enforceable at any time. In reaching that conclusion, the court rejected the argument that collection of a judgment for a tax assessment was subject to a state statute of limitations. The court stated that this argument "overlooks the established rule that a state statute of limitation cannot run against the United States unless a federal statute permits." *Id.* at 1147 n.7 (citing, e.g., *United States* v. *Summerlin*, *supra*). See also *Bresson* v. *Commissioner*, 213 F.3d 1173, 1178 (9th Cir. 2000) (in

seeking to impose liability for taxes on transferee who holds assets of taxpayer, the United States is not subject to limitations of state law because the right to collect federal taxes "clearly derives from the operation of federal law" and "in its efforts to collect taxes, the United States unquestionably is acting in its sovereign capacity").

2. a. Against this background, Congress enacted a federal statute of limitations for the collection of federal tax liabilities in 26 U.S.C. 6502(a). During the period relevant to this suit, that statute provided that an assessment may be collected either by levy or by judicial proceedings if the levy is made or the proceedings begun within six years after the date of the assessment.[1] The last sentence of the statute further provided that "[t]he period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer." 26 U.S.C. 6502(a) (1988). In 1988, Congress amended the last sentence of Section 6502(a) to provide as follows:

> If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 1015(u)(1), 102 Stat. 3342, 3573, as technically corrected by Revenue Reconciliation Act of

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[1] 26 U.S.C. 6502(a) was amended in 1990 to enlarge the six-year collection period to ten years. Pub. L. No. 101-508, § 11317(a)(1), 104 Stat. 1388-1458.

1989, Pub. L. No. 101-239, § 7811(k)(2), 103 Stat. 2412. The purpose of this amendment was to ensure that "if a timely proceeding in court for the collection of tax is commenced, the period during which the tax may be collected by levy shall not expire as long as the tax is collectible." H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. Pt. 2, at 6 (1988).

b. Petitioner asserts (Pet. 6) that, in enacting this 1988 amendment to 26 U.S.C. 6502(a), Congress waived the well-established immunity of the United States from state statutes of limitations and agreed to abide by such limitations with respect to the collection of federal taxes. That assertion, however, finds no support in the language or history of the statute. Although the last sentence of Section 6502(a), as amended in 1988, makes reference to the possibility that judgments against taxpayers may become unenforceable due to being "satisfied" or for other unspecified reasons (26 U.S.C. 6502(a)), nowhere does this statute state or even imply that the United States has agreed to be bound by state statutes of limitations in the collection of federal tax debts.

Instead, as we have just noted, the purpose of the 1988 amendment was simply to extend the period during which a tax could collected by administrative levy. H.R. Conf. Rep. No. 1104, *supra*, at 6. Nothing in the text or history of this amendment suggests that Congress intended to curtail the ability of the United States to collect unpaid taxes by subjecting the federal government to state statutes of limitations. As the courts below correctly concluded, this statute fails to provide any "clear statement of Congressional intent to make judgments in favor of the United States subject to state-imposed limits on enforceability." Pet. App. 14, 18.

3. a. Petitioner also contends (Pet. 5-6) that state statutes of limitations apply to judgments for federal taxes under Rule 69(a) of the Federal Rules of Civil Procedure. That Rule, however, does not subject the United States to state statutes of limitations, for it merely specifies that (Fed. R. Civ. P. 69(a) (emphasis added)):

> [t]he procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, *except that any statute of the United States governs to the extent that it is applicable.*

The state statutes of limitations for the enforcement of judgments are not part of the state "practice and procedure" on the "execution" of judgments that is incorporated by this Rule for the enforcement of federal decrees. See *United States* v. *Overman*, 424 F.2d at 1147 ("the judgment itself is not subject to limitations and is enforceable at any time"). Moreover, Congress *has* provided a specific federal rule for the enforcement of judgments obtained by the United States after May 29, 1981. See 28 U.S.C. 3005. Under that statute, which is known as the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. 3001 *et seq.*, a judgment in favor of the United States creates a lien on the real property of the judgment debtor that is effective for a period of 20 years and, with approval of the court, may be renewed for an additional 20-year period. 28 U.S.C. 3201.

The judgment obtained by the United States against petitioner was entered in 1985 and is therefore subject

to the FDCPA. Pet. App. 12. Under the FDCPA, the lien established by that judgment remains enforceable at least until the year 2005. Since Rule 69(a) of the Federal Rules of Civil Procedure expressly incorporates the rules established by "any statute of the United States" (Fed. R. Civ. P. 69(a)), the FDCPA is controlling in this case. Enforcement of the judgment obtained against petitioner is thus authorized by the FDCPA regardless of any contrary state rules of practice or procedure concerning the enforcement of judgments generally.

b. Petitioner errs in contending (Pet. 3-4) that the decision of the court of appeals in this case conflicts with *Custer* v. *McCutcheon*, 283 U.S. 514 (1931), *United States* v. *Fiorella*, 869 F.2d 1425 (11th Cir. 1989), and *United States* v. *Little*, 52 F.3d 495 (4th Cir. 1995). None of the judgments involved in those cases were subject to the FDCPA, and the decisions in those cases thus cannot (and do not) support petitioner's reliance on Rule 69(a).

Both *Custer* v. *McCutcheon*, *supra*, and *United States* v. *Fiorella*, *supra*, were issued *before* enactment of the FDCPA. Those decisions thus plainly do not address the rights of the United States under that statute.[2] And, although *United States* v. *Little*, *supra*,

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[2] Moreover, in *Custer* v. *McCutcheon*, 283 U.S. at 519, the Court emphasized that it was addressing a state rule of practice that was "not a statute of limitations" and that the plaintiff in that case was "not precluded from bringing an action upon the judgment, but merely from having an execution [issued] in the form provided by state law." Similarly, in *United States* v. *Fiorella*, 869 F.2d at 1426-1427, the court noted that "the United States is not subject to local statutes of limitations" and emphasized that the question in that case did not concern a statute of limitations directly but instead concerned only whether a judgment that had

was decided *after* enactment of the FDCPA, the court concluded that the Act did not apply to either of the two judgments at issue in that case—a 1978 judgment against the taxpayer and a 1982 consent judgment that had been rendered against property held in the names of third parties as nominees for the taxpayer. The court held that the 1978 judgment was not subject to the FDCPA because it antedated the effective date of the Act by more than 10 years. 52 F.3d at 498. The court further held that the consent judgment was not subject to the FDCPA because it was not an adjudication of liability but was, instead, an adjudication that certain property could be used to satisfy a pre-existing liability. *Id.* at 498-499. Because the decisions cited by petitioner do not address the rights of the United States under the FDCPA, they cannot be said to conflict with the decision in the present case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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lapsed 20 years after its entry "is now capable of being revived under Alabama law."